UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,333	06/23/2008	Ludger Heiliger	PO-8233/RC-231	5431

34947 7590 07/18/2011

LANXESS CORPORATION
111 RIDC PARK WEST DRIVE
PITTSBURGH, PA 15275-1112

EXAMINER	
NUTTER, NATHAN M	

ART UNIT	PAPER NUMBER
1765	

NOTIFICATION DATE	DELIVERY MODE
07/18/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipmail@lanxess.com

Office Action Summary	Application No.	Applicant(s)	
	10/573,333	HEILIGER ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 June 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12,14-19 and 21-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12, 14-19 and 21-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 June 2011 has been entered.

Response to Amendment

In response to the amendment filed 21 June 2011, the following is placed in effect.

The rejection of claims 1-19 and 21-29 under 35 U.S.C. 112, first paragraph for enablement, is hereby expressly withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11, 16-19 and 21-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12, 15-19 and 23-30 of copending Application No. 10/573,217 (US 2007/0232733) Ziser et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the thermoplastic materials and microgels of the copending application may embrace those recited and claimed herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10, 11, 12, 14-19, 21-23 and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Linder et al (US 5,075,380).

The patent to Linder et al teaches the production of soft thermoplastically processible polymer alloys containing polyamides. Said alloy et al comprises 10 to 50% by weight of a cyclo (aliphatic) polyamide and 90 to 50% by weight of a crosslinked particulate alkyl acrylate copolymer. Said crosslinked particulate alkyl acrylate copolymers are obtain from the components found in column 1 (lines 45-65) by emulsion polymerization. Note column 3 (lines 20-25). Said polyamides are described in column 2. The crosslinked particulate alkyl acrylate copolymer has an average particles diameter (d50) from 0.09 to 1.2 mm, preferably from 0.1 to .4 mm and gel content preferably from 70 to 90% by weight. The crosslinked particulate alkyl acrylate copolymer is crosslinked in a free radical method using a crosslinking compound or by peroxide treatment. The Examiner deems that non-irradiation crosslinked particles are envisioned within the reference even though radiation crosslinking is disclosed. In

addition to the polyamide and crosslinked particulate alkyl acrylate copolymer, the composition can also comprise conventional additive. Note column 3 (lines 40-45). Linder et al teaches the alloy can be prepared by conventional methods such as mixing the crosslinked particulate alkyl acrylate copolymer after polymerization and drying into the polyamide with other additive by means of a compounding machine (apparatus), mixing screws or rollers at an elevated temperature. Note column 3 (lines 48-57) and the examples.

Response to Arguments

Applicant's arguments filed 21 June 2011 have been fully considered but they are not persuasive.

With regard to the provisional rejection of claims 1-11, 16-19 and 21-27 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12, 15-19 and 23-30 of copending Application No. 10/573,217 (US 2007/0232733) Ziser et al, no Terminal disclaimer has been filed.

With regard to the rejection of claims 1-7, 10, 11, 12, 14-19, 21-23 and 25-29 under 35 U.S.C. 102(b) as being anticipated by Linder et al (US 5,075,380), applicant argues the "alloy of Linder has a rubber copolymer (b) having a particle size of 0.09 to 1.2 mm (i.e., 90000 to 1200000 nm) (Col. 1, Line 68). In stark contrast, the presently claimed invention has a microgel which comprises primary particles having an average particle size of 30 to 300 nm. Linder clearly fails to teach or suggest the use of a microgel having an average particle size of 30 to 300 nm." Applicant's interpretation is

incorrect since applicants have converted an incorrect parameter. The reference clearly states at column 3 (lines 18-20) the particle size of 0.09 μm to 0.8 μm (not 0.09 mm to 0.8 mm), which is equivalent to 90 to 800 nm, overlapping at 90-300 nm.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is (571)272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan M Nutter/
Primary Examiner, Art Unit 1765

nmn

13 July 2011